

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

EFRAT UNGAR, et al CA NO 00-105 L

vs.

THE PALESTINIAN JANUARY 13, 2010  
LIBERATION ORG. PROVIDENCE, RI

BEFORE MAGISTRATE JUDGE DAVID L. MARTIN

APPEARANCES:

FOR THE JUDGMENT CREDITORS: DAVID J. STRACHMAN, ESQ.  
321 S. Main St.  
Suite 400  
Providence, RI 02903  
351-7700

FOR THE DEFENDANTS: RICHARD A. HIBEY, ESQ.  
655 Fifteenth St. NW  
Suite 900  
Washington, DC 20005  
202-626-5800

BRIAN HILL, ESQ.

FOR THE PLO: DEMING E. SHERMAN, ESQ.  
Edwards Angell  
2800 Financial Plaza  
Providence, RI 02903  
401-274-9200

1  
2 JANUARY 13, 2010

3 THE COURT: This is the matter of the estate of  
4 Yaron Ungar, et al vs the Palestinian Authority, et al,  
5 Civil Action No. 00-105 L. This matter is before the  
6 Court this morning on plaintiffs' judgment creditors  
7 motion for a payment decree. That's docket number 467  
8 in the clerk's file. The attorneys will identify  
9 themselves, please.

10 MR. STRACHMAN: Good morning, your Honor. David  
11 Strachman for the judgment creditors.

12 MR. SHERMAN: Your Honor, Deming Sherman for the  
13 Palestinian Authority.

14 MR. HILL: Brian Hill for the defendants.

15 MR. HIBEY: Good morning, your Honor. Richard  
16 Hibey for the defendants.

17 THE COURT: Thank you, Counsel. Mr. Hill, I have  
18 your motion for admission pro hac vice and I'm advised  
19 that a certificate which was missing previously has been  
20 now filed, so I'll be granting that. So YOU will be  
21 admitted.

22 MR. HILL: Thank you, your Honor.

23 THE COURT: All right, Mr. Strachman, this is  
24 your motion. I'll hear you, sir.

25 MR. STRACHMAN: Good morning, your Honor.

1           THE COURT:   Good morning.

2           MR. STRACHMAN:   This matter is now verging on the  
3   tenth year anniversary of the date our complaint was  
4   filed in March of 2002.   Judgment entered.   As the Court  
5   knows, after 289 docket entries, in July of 2005 the  
6   Court issued the better part of a dozen decisions  
7   between your Honor and Judge Lagueux, with two appeals,  
8   a motion to vacate which was denied in the spring, and  
9   we now find ourselves, the Ungar orphans and their  
10   family, find themselves ten years -- or five and a half  
11   years after the judgment without having the judgment  
12   satisfied with the PLO and the PA informing us  
13   repeatedly that they will not pay the judgment, never  
14   coming to this Court telling your Honor in the present  
15   pleadings, and the round of pleadings with Judge Lagueux  
16   last year, or at anytime in the post judgment period  
17   where we've been back to this Court several times in  
18   front of Judge Lagueux, never once saying, "we will  
19   honor and pay this judgment".   As a result of that, my  
20   clients have been forced to expend tremendous amounts of  
21   sums litigating collection proceedings in several  
22   different courts in New York, several different types of  
23   proceedings there, state and federal courts, several  
24   foreign countries, Connecticut, Washington.   We had the  
25   judgment debtors fight us over \$11,000 that we

1 identified. We had them litigate for over a year  
2 \$180,000, I believe, in Washington. We have had  
3 extensive litigation in Israel domesticating our  
4 judgment. The judgment debtors even there failing to  
5 pay the attorney's fees that were ordered of a quarter  
6 of a million dollars. That was over a year ago.

7 We now find ourselves in the unique situation in that  
8 as a result of both a stipulation between the parties in  
9 Israel and a subsequent ruling by the District Court  
10 judge in Israel, there now is over a hundred million  
11 dollars that is, as of this month, that is restrained  
12 from the Palestinian Authorities' monthly income from  
13 the Israeli government. That money is being held by the  
14 Israeli treasury. It accrues at a rate of approximately  
15 4 and a half million dollars per month. It will  
16 continue for the next couple of months, and then will  
17 terminate once the judgment amount is -- total judgment  
18 is restrained. That money is clearly income. It has  
19 been identified by the judgment debtors as their income.  
20 It is shown on their books as income. It was as part of  
21 funds that are transferred on a monthly basis, a small  
22 fraction of the funds that are transferred on a monthly  
23 basis from the Government of Israel to the Palestinian  
24 Authority to fund their operations.

25 THE COURT: Mr. Strachman, you're saying the

1 4.5 million which is being restrained, withheld, held by  
2 the Israeli treasury, is being shown by the Palestinian  
3 Authority as income even though they're not receiving  
4 it? Did I understand you to say that?

5 MR. STRACHMAN: The totality of the monthly  
6 payments is considered their income. They receive a  
7 penny on several different factors, but they receive  
8 tens of millions of dollars a month as income from the  
9 Israeli government. A portion of this 4 and a half  
10 million dollars is set aside pursuant to the District  
11 Court order in Israel to, as a condition of a stay of  
12 enforcing the 2008 ruling of the Court in Israel  
13 domesticating the judgment. This is a stream of income,  
14 and the 4 and a half million is a subset of that stream  
15 of income that they see each month. They catalogue it,  
16 they identify it, quantify it, and everyone refers to it  
17 as their income on their yearly balance sheets. Whether  
18 they're -- how they're accounting for this 4 and a half  
19 million that they're not actually realizing or seeing  
20 right now is something else, but it's clearly a stream  
21 of income that they receive, and it was intended right  
22 from the very beginning of the Oslo Accord to help fund  
23 their operations. This is a 3 and a half billion dollar  
24 a year operation. Their records clearly indicate as  
25 much. Their balance sheets are made public, and it is

1 -- in fact, that's what is made public. Whether there  
2 are additional sums that are off budget, there are all  
3 kinds of issues and allegations with respect to that  
4 but, in general, it is clear that they themselves have  
5 acknowledged that they have a 3 and a half billion  
6 dollar a year budget. This is a tiny fraction of that.

7 The litigation, in the Knox case, is important for  
8 this Court to be aware of because in that case, the  
9 District Court Judge ordered the same judgment debtors  
10 to submit bond in the amount of \$192 million as a  
11 condition of vacating the judgment. They then moved and  
12 said, "We cannot put up 192". They themselves  
13 acknowledged, and this is important, that they could put  
14 up \$15 million as a bond. That was a sum that they  
15 acknowledged they were able and ready and willing to put  
16 up as security. After almost a year of intensive  
17 discovery supervised by Magistrate Judge Katz through a  
18 series of telephonic hearings from all over the world  
19 and with different multiple submissions of evidence,  
20 repeated submissions of evidence, I believe Prime  
21 Minister Fayyad himself submitted four affidavits, each  
22 time documenting more and more of the Palestinian  
23 Authority's assets and income, including the transfers  
24 between these two defendants. The Palestinian Authority  
25 gives the PLO approximately \$7 million a quarter to fund

1 its terrorist operation.

2 Once that was all documented, the Court issued a  
3 ruling, Judge Katz issued a ruling, indicating that the  
4 Palestinian Authority had the ability to submit bond in  
5 the amount of \$120 million, eight times what they  
6 proposed to the Court, and obviously a third less than  
7 what the Court had originally indicated.

8 And that's very significant because the Court, after  
9 making very detailed findings, also indicated that this  
10 past September, the first payment toward that \$120  
11 million, would be paid. I believe it was September 26th  
12 they were obligated to post the first \$20 million, and  
13 then \$10 million a month thereafter until the entire  
14 \$120 million was reached. Judge Marrero upheld  
15 Magistrate Judge Katz's ruling, and that became the law  
16 of the case. Shortly thereafter, sometime thereafter,  
17 the parties reached an agreement with respect to all the  
18 issues pending in that case. But what's significant for  
19 us is that two federal judges already ruled that they  
20 have the ability to make monthly payments, and they have  
21 the ability to put \$20 million as collateral, for a  
22 bond, toward the end of September, just a few months  
23 ago, and that was after extensive discovery. As I said,  
24 it took the better part of a year, hundreds of thousands  
25 of documents -- not hundreds of thousands, but thousands

1 of documents were transmitted back and forth with  
2 respect to the Palestinian Authority's assets and  
3 income, land holdings, multiple affidavits submitted by  
4 many people up and down the Palestinian Authority's  
5 administration, including their president -- excuse me,  
6 their Prime Minister, Mr. Fayyad, who is an economist.

7 So, that shows the background as to where we are  
8 right now. We have asked this Court to treat this case  
9 like any other collection matter at this stage, and any  
10 other collection matter, whether it be in federal court  
11 or the Rhode Island District Court, or the Rhode Island  
12 Superior Court, a judgment debtor would be hauled in for  
13 examination, and would be ordered to show cause why it  
14 has not paid this 5 and a half year old judgment.

15 This case, and the posture of this case, is  
16 significantly advanced even from that of the  
17 standardized, if you will, or the standard type of  
18 procedure because we have already identified a source of  
19 income that they are not using that can be used to fund  
20 the payment of this judgment. We also have an advance  
21 ruling by two federal judges --

22 THE COURT: Mr. Strachman, when you say a source  
23 of income that can be used, are you referring to the  
24 money being held in the Israeli treasury?

25 MR. STRACHMAN: Correct.



1           THE COURT: All right. Please continue.

2           MR. STRACHMAN: So that \$100 million amount of  
3 their income, which they have not been able to use for  
4 the last several years but is accruing, would allow this  
5 judgment debtor very simply to effectively fund the  
6 payment of this judgment. So what we have proposed is  
7 that the Court order them to make the payment on the  
8 judgment and then we would immediately release the hold  
9 over the funds in Israel effectively making a cash  
10 neutral transaction for them. Because they have hemmed  
11 and hawed, and because throughout this litigation we  
12 have had to provide solutions, we believe, offered  
13 solutions to the Court, to deal with their intransigent  
14 and belligerence, what we have suggested is that even if  
15 they don't have \$100 million to pay us today and then  
16 48 hours later we would release \$100 million from the  
17 Israeli funds, for example, that they do so in  
18 installments, and we did that as a prophylactic. We did  
19 that in order to defeat their contention that they can't  
20 make the entire payment. But what we have proposed is  
21 that, in our response brief, that they make a \$20  
22 million payment, or a payment that the Court deems  
23 appropriate, immediately release that same amount of  
24 money from the Israeli -- funds that the Israeli  
25 treasury is holding, and continue to do that on a serial

1 basis until the judgment is paid. And what that would  
2 do is provide virtually no inconvenience to them. It  
3 would be completely consistent with the findings of the  
4 Knox court, their own references that we've provided in  
5 our pleadings to their budget, their income and their  
6 assets, and would finally provide a mechanism to have  
7 this judgment satisfied and detangled from all these  
8 years of litigation.

9 Now, in response, they still don't come to this Court  
10 and say we can pay a single penny for this judgment.  
11 They have not offered and have not indicated, either in  
12 the pleadings here or in the pleadings with Judge  
13 Lagueux, that they will pay the judgment, they will  
14 honor the judgment. What they have done, and they'll  
15 continue to do, is raise two types of argument. One,  
16 the world is falling in the Middle East. We heard that  
17 for years with Ramsey Clark in this courtroom and in  
18 front of Judge Lagueux, and twice the Court of Appeals.  
19 The world is falling. They have no assets. They can't  
20 respond. This judgment is going to interfere with their  
21 operations. It's going to interfere with the funding of  
22 the Palestinian Society. Obviously this judgment is  
23 against two terrorist organizations, not the Palestinian  
24 people, and obviously what we have done is we have  
25 proposed effectively a mechanism to have this judgment

1 paid that will have no immediate impact on them at all,  
2 none whatsoever. Unlike every other debtor that comes  
3 into the district court on a collection case, on a  
4 \$2,000 collection case across the street, he has to  
5 reach into his pocket and grab \$2,000. This defendant  
6 will have to reach into his pocket, grab some money,  
7 whatever sum the Court deems appropriate, we've  
8 suggested, say \$20 million, and then within 48 hours we  
9 would release \$20 million on the Israeli hold, and they  
10 will receive that, within 48 hours, absent no  
11 ramifications, no effect on their day-to-day  
12 operations.

13 Now the second type of argument, and it's detailed,  
14 and we've provided details and the cites, obviously in  
15 our response brief, are a series of red herring  
16 procedural types of arguments about service of process,  
17 about the nature of Chapter 9-28, about the rights of a  
18 federal court to enforce a judgment of a debtor who does  
19 not reside in Rhode Island. We believe each of those  
20 procedural arguments are just another red herring,  
21 another opportunity for the defendants to do what  
22 they've done throughout this litigation, which does not  
23 address the merits, does not address what's really  
24 before this Court. To say that, for instance, that a  
25 debtor who could be in this Court for 289 pleadings, a

1 dozen written decisions and two appeals, 4 and a half  
2 years of litigation, wait 5 and a half years after the  
3 judgment, file a motion to vacate, never once  
4 volunteering to pay this judgment, forcing the Ungar  
5 family to go literally all over this world to try to  
6 enforce their judgment, and then simply get out of  
7 having this Court order them to pay the judgment because  
8 maybe they moved across state lines into Attleboro, is  
9 preposterous. It's an absurdity. It would make a  
10 mockery of the entire proceedings. Judge Lagueux years  
11 ago restrained them nationally. He issued a restraining  
12 order in May of 2005 from utilizing any bank or  
13 financial operation or enterprise in the entire United  
14 States. To now say that this Court doesn't have  
15 authority to tell them to make a payment toward this  
16 judgment just would make a mockery of the entire  
17 proceeding. At the same time, come into this Court and  
18 never once saying they do have funds and they are  
19 willing to comply with the court order.

20 The burden of proof argument they raise is equally  
21 absurd. The case they rely on, the Ciccone case, says  
22 nothing at all about the burden of proof. It has to do  
23 with simply a judgment, a debtor who offered no evidence  
24 in his own behalf and simply relied and argued about the  
25 evidence that the judgment creditor submitted.

1       The statute 9-28, the Rhode Island rule, Rule 69,  
2       which isn't obviously directly applicable in this  
3       proceeding, but both of those provisions say very  
4       clearly the citation is law, that the Court already  
5       issued. It puts the burden on the judgment debtors to  
6       explain and to show cause why they haven't paid this  
7       judgment. What they have done in the last 5 and a half  
8       years to satisfy this judgment. Under their analysis,  
9       the issuance of a judgment is no different than any  
10      other ruling of the Court. They don't have any  
11      obligation to comply with it. They have no obligation  
12      to come to this Court in good faith with either a plan,  
13      an offer, a proposal. They did none of that. To argue  
14      that there are local governments and therefore are  
15      immune from an attachment, the Foreign Sovereign  
16      Immunities Act says that foreign states are subject to  
17      execution. How could an entity like the Palestinian  
18      Authority escape the machinations of the state and  
19      federal collection proceedings when a foreign state  
20      couldn't. It's absurd. This Court heard ad nauseam the  
21      three motions to dismiss their allegations about the  
22      statehood. No court has ever said they are a state,  
23      that they -- no court ever, the United States or in  
24      Israel, or anywhere else in the world that I'm aware of,  
25      has ever said the Palestinian Authority is a state, yet

1 they seek to invoke rights that even foreign states  
2 don't have.

3 So, in sum, I know the Court's familiar with our  
4 response brief. I think that these two kinds of  
5 arguments suggest that this is just yet another stalling  
6 mechanism, a suggestion that this Court now should  
7 certify this matter to the Rhode Island Supreme Court  
8 and send this there for what could be another year and a  
9 half of delay is just -- is almost macabre, it's  
10 cynical, and the Court shouldn't entertain that kind of  
11 suggestion. The tone of the brief, the tone of the  
12 filings, the suggestion that we're here now  
13 approximately 200 docket entries after judgment, when  
14 Judge Lagueux himself found almost 4 years ago, excuse  
15 me, almost 5 years ago, I think it was May of 2005, he  
16 found that they were not paying the judgment, that they  
17 were transferring assets out of the United States, and  
18 we're still no better off than we were from the  
19 perspective of having this judgment satisfied, further  
20 torturing the Ungars to expend funds and emotional  
21 effort and resources to have the judgment enforced and  
22 satisfied in other jurisdictions when they have a  
23 3 and a half billion dollar judgment and they have the  
24 very funds available to satisfy virtually the entirety  
25 of this judgment right on hand, that they haven't used,

1 in a restrained account, partially restrained, with  
2 their own consent, that was the first order of the  
3 district court, would just make a mockery of this  
4 proceeding. Thank you, your Honor.

5 THE COURT: Mr. Strachman, you say that the  
6 defendants incorrectly cite or rely upon the Ciccone  
7 case on the issue of burden of proof, that they suggest  
8 it's your burden and you say, in fact, it's their burden  
9 to show they do not have the ability to pay the  
10 judgment, is that correct?

11 MR. STRACHMAN: Correct.

12 THE COURT: Are you suggesting that at this  
13 hearing today they have the burden of demonstrating they  
14 do not have the ability to pay the judgment? And if you  
15 are, what about the fact that in your memorandum on  
16 Page 6 you have the footnote which states, "In light of  
17 the nature of the relief sought in this motion, no  
18 examination of the PA and the PLO regarding their assets  
19 need take place at the January 13, 2010 hearing", and  
20 the telephone conference call that I conducted with  
21 counsel approximately 2 weeks ago to clarify whether or  
22 not the defendants would be required to have someone  
23 present for purposes of an examination? So my question  
24 to you is that if you take the position that they have  
25 the burden of showing that they can't pay the judgment

1 and yet at the same time before the hearing you  
2 indicated they didn't need to produce anyone to testify,  
3 I see something of a conflict there in the sense that if  
4 you're asking the Court to make a finding that they have  
5 the ability to pay, or they fail to show at this hearing  
6 this morning, that they do not have the ability to pay,  
7 how do I reconcile that with what's transpired in terms  
8 of what's communicated to them as to what they were  
9 obligated to do for this hearing in terms of presenting  
10 evidence or testimony? Could you respond to that?

11 MR. STRACHMAN: Certainly. First, Judge, with  
12 respect to the burden, the statute says very clearly  
13 that the burden is on the judgment debtors. It says  
14 they are cited to show cause why they haven't paid, why  
15 an order should not enter against them with respect to  
16 their income and their assets. They provide no  
17 indication that they have not one red cent to pay this  
18 judgment. It would be absurd. If they came to court  
19 and say we don't have a hundred million but we have  
20 \$20 million a month, we have X, they haven't done that.  
21 This is a 3 and a half billion dollar budget. We  
22 submitted their own budget. We submitted their own  
23 affiant's statement. And the facts of their financial  
24 circumstances are really not at issue. But they are  
25 especially not at issue in this case at this junction is



1 because their own income has been set aside to pay this  
2 judgment. So we have a pool of their income that has  
3 been set aside, that they have not been able to use,  
4 that they have not used, that has not interfered with  
5 their operation which is almost at this point  
6 surplusage, and they're not coming to this Court and  
7 denying that they have this huge 3 and a half billion  
8 dollar yearly operation. They're not saying that they  
9 don't have their income already set aside by one Judge  
10 to pay this very judgment. This is their income. They  
11 have over \$100 million in income to pay this judgment  
12 which was specifically dedicated to pay this judgment.  
13 The only question is that the machinations of their  
14 appeal and their recently asked to delay oral argument  
15 on their appeal in Israel, which was granted, will take  
16 possibly another few more years. So this is a very  
17 different case than the typical --

18 THE COURT: Mr. Strachman, are you saying they  
19 sought to delay their appeal of the 2008 judgment by the  
20 Israeli district court?

21 MR. STRACHMAN: Right. They're scheduled for  
22 oral arguments for tomorrow.

23 THE COURT: Before the Supreme Court.

24 MR. STRACHMAN: Before the Supreme Court of  
25 Israel, correct. They filed a motion, I think it was --

1 I think it was last Sunday or Monday. They filed a  
2 motion requesting that oral argument be delayed until  
3 the First Circuit rules on Judge Lagueux's motion for --  
4 motion to vacate.

5 THE COURT: When is argument scheduled in the  
6 First Circuit?

7 MR. STRACHMAN: It was last week. Last Thursday.

8 THE COURT: And the Israeli Supreme Court granted  
9 the motion that they filed to delay the oral arguments  
10 on their appeal of the Israeli District Court?

11 MR. STRACHMAN: Correct, correct. And as I  
12 understand it, it is ordered to occur approx -- I don't  
13 know the exact text of the order but it's my  
14 understanding that the order says something like 30 days  
15 after the First Circuit ruled oral argument will be  
16 rescheduled in Israel.

17 THE COURT: All right.

18 MR. STRACHMAN: So this is a very different  
19 situation. This is not a typical judgment debtor who  
20 comes in and either the chase is on or, you know, claims  
21 an exemption. These funds have already been segregated  
22 specifically for this judgment. Some of them, the  
23 original attachment of these funds, was with their own  
24 consent. We moved for an attachment in Israel while the  
25 domestication proceeding was ongoing. The Judge,

1 Judge Farkosh, and I was there, I was in the courtroom,  
2 he arranged a consent order between the parties to take  
3 a portion of the funds each and every month until the  
4 judgment was domesticated, and then he continued that  
5 afterwards as a condition of staying enforcement in  
6 Israel. So this is a very different situation. In  
7 other words, we don't have the funds not identified.  
8 And we said very forthrightly right at the beginning we  
9 didn't need them to come in here and to testify with  
10 respect to their income and assets. What we need to  
11 know about their income and assets is not at issue. We  
12 submitted their affidavit of Hatam Yousef. He explained  
13 what their budget is, and he attaches their budget.  
14 We've explained to the Court and showed the Court Judge  
15 Farkosh's ruling. So this need not turn into a, you  
16 know, a circus as it was in the Knox case.

17 Also, we have the rulings of the Knox case, which was  
18 just from several months ago, indicating that as of  
19 September 26th they had the ability to post \$20 million  
20 as of September 26th, and after a thorough review of all  
21 their income and assets, and multiple proceedings, we  
22 must have had 6 or 8 telephone conferences, counsel was  
23 in Washington, I believe, and overseas sometimes, I was  
24 in Rhode Island, the Judge was in New York, and we had  
25 multiple conferences about this discovery, about the

1 information that they would need to submit so that we  
2 could determine whether their representation that they  
3 could submit a bond for \$15 million, or the 192. We  
4 also have their own offer, they offered in Knox, and  
5 they said, "We have the ability to present a bond of \$15  
6 million". So we have a series of representations that's  
7 not really at issue.

8 THE COURT: Well, it sounds to me, Mr. Strachman,  
9 that you're asking me to either infer or find that  
10 because they had at the time of the Knox case the  
11 ability to say, "We can post the \$20 million bond", that  
12 they still have that ability, it sounds to me that  
13 that's your argument. And, I mean, you indicate there's  
14 been a settlement in the Knox case, and you didn't --  
15 perhaps it's not known what the nature of the settlement  
16 is, but, I mean, is it not possible that the \$20 million  
17 which was available to be posted which they said, "We  
18 could post as a bond in the Knox case", has since been  
19 utilized for other purposes, potentially the settlement  
20 of the Knox case and therefore the \$20 million that was  
21 available at the time they made that statement or  
22 representation is no longer available? So how can I  
23 take the fact that a few months ago they said they could  
24 post \$20 million to make a finding now they have the  
25 ability to pay \$20 million?

1           MR. STRACHMAN: They never said they could post  
2 \$20 million. It was two federal judges who said on  
3 September 26th they would have \$20 million, and in  
4 October 26th they would have another \$10 million to post  
5 for the bond, and each and every month. That issue has  
6 already been litigated, and that was in the context,  
7 because it was obviously the Knox case, and not this  
8 case, it was with full recognition that some of their  
9 tax money had been segregated for the Ungars. Here, all  
10 we're saying is this case is even better than Knox  
11 because now we're taking, effectively, we're suggesting,  
12 pay 20, you're going to get 20. There's no way out of  
13 that. There's no way they could come to this Court with  
14 honesty and say "We don't have that ability", because  
15 with the 3 and a half billion dollar a year budget,  
16 there's all of the payments to prisoners, terrorists who  
17 are sitting in Israeli prisons, all the other payments  
18 that they're making each month, the monthly influx of  
19 between 250 and 300 million, that's from their own  
20 affiant, per month, in Israeli shekels, approximately 4  
21 and a half shekels per dollar, they have no way out of,  
22 I think, a finding, and that's why we suggest we don't  
23 need to do fact-finding and turn this into a whole  
24 circus again and run another year of discovery because  
25 we have the Knox case but only far better, much better,

1 because these funds are right there and segregated. And  
2 at the same time, the issue at some level in a citation  
3 proceeding is not whether they have the ability to pay  
4 the entire judgment right this second, but what can they  
5 pay right now. They would have the Court believe they  
6 don't have to do anything. They don't come with any  
7 suggestion as to how to pay this 5 and a half year old  
8 judgment, and I suggest that in light of their own  
9 affiant's statements, that's bad faith. This is not an  
10 enterprise with no funds. They have 3 and a half  
11 billion dollars a year. They don't want to pay this  
12 judgment. They have told me personally, three separate  
13 lawyers have told me they will never pay this judgment,  
14 and they have attempted to stall the proceedings in  
15 Israel. They've attempted to stall the proceedings in  
16 other jurisdictions with their partners, with business  
17 partners, their fronts. Judge Lagueux, several years  
18 ago, ordered their, we call it their Christmas fund  
19 account, the Palestine Investment Fund, transferred over  
20 to us. They refused to comply with that. They refused  
21 to -- in fact, it's worse than that. With counsel  
22 present, with counsel in the courtroom, they refused to  
23 even respond to Judge Lagueux's order that they respond  
24 to a creditor's bill, asking that the Palestine  
25 Investment Fund be transferred to us, and then we find

1     that the Ungars were sued several times by the Palestine  
2     Investment Fund and others, and the Palestinian Monetary  
3     Authority, and other entities that they're associated  
4     with, and their sort of sub-entities, if you will. We  
5     find ourselves defending suits and being sued. They  
6     worked with their investment outfit in Connecticut to  
7     work a stay, and the district court in Connecticut said  
8     we're going to -- it would grant a stay on the  
9     collection proceedings in Connecticut. We appealed  
10    that, and the Second Circuit said that it would continue  
11    the stay until all appeals are resolved.

12        So not only are they acting to further avoid this  
13    judgment, and sort of playing dead, they're working  
14    aggressively to undermine the judgment. I've written  
15    repeated letters to counsel, when will this judgment be  
16    paid. We provided some of those letters to the Court.  
17    When will this judgment be paid? No response. Not a  
18    single response, and there is no response, and you will  
19    have no response today. No one will step up to this  
20    podium and say, "We can't pay a hundred million today  
21    but here's what we can do, here's the schedule". They  
22    won't do it. The Court has no other, I think,  
23    legitimate position, which is to order them to pay  
24    especially when we have gone out of our way to come up  
25    with, as we did for the first 4 and a half years of

1 litigation, to help them out of their own problems, and  
2 here we proposed a solution to the Court which is  
3 revenue neutral, which at one level, a rational observer  
4 might say this is the perfect way for them to get out of  
5 it, release these funds that they haven't used for  
6 several years, pay the judgment, we're on our way. I  
7 hope I've answered your Honor's question.

8 THE COURT: You have, Mr. Strachman.  
9 Mr. Strachman, ballpark, how much have the plaintiffs  
10 recovered of the judgment at this point? Anything?

11 MR. STRACHMAN: It's approximately \$5 million.

12 THE COURT: That you've recovered so far?

13 MR. STRACHMAN: That we've recovered, right.  
14 Again, just to be clear, it's not funds that were given  
15 to us. We had to go throughout the country, and the  
16 defendants actively -- \$11,000 they were fighting us.  
17 They fought us for \$180,000 in Washington for two years.  
18 So, 18 months, I forget exactly. Several years ago. So  
19 we have recovered a small portion. That's less than the  
20 interest that has accrued on the judgment in 5 and a  
21 half years, and certainly with the interest and with our  
22 enormous collection costs, does not make a dent at all  
23 into the judgment.

24 THE COURT: All right. Thank you, Mr. Strachman.

25 MR. STRACHMAN: Thank you.



1           THE COURT:   Excuse me, counsel.   (Pause)

2   Thank you, Mr. Hibey.   You may proceed.

3           MR. HIBEY:   Hibey, yes.

4           THE COURT:   Hibey, thank you.

5           MR. HIBEY:   Thank you, your Honor.   Good morning.

6           THE COURT:   Good morning.

7           MR. HIBEY:   Your Honor, I think that I'd like to  
8   begin my remarks by addressing the recitation of  
9   Mr. Strachman regarding the procedural history of the  
10   case because in our view much of what we heard today was  
11   either missing or utterly revisionist in its  
12   characterization of what has been going on in this  
13   litigation.

14          He began by saying that the motion to vacate under  
15   Rule 60, which was argued by my colleague before Judge  
16   Lagueux, was denied this spring, past spring, and that  
17   that becomes the point of departure for many of the  
18   statements that he speaks to regarding the procedural  
19   posture of the case.

20          The procedural posture of the case is informed  
21   further by recent developments.   I'm not sure whether  
22   the Court is aware of them.   These recent developments,  
23   in the Ungar case, the support in our view, the  
24   prematurity of this, and argue against stampeding this  
25   Court into any consideration of the issue of -- painted

1 as put before the Court in Mr. Strachman's papers.

2 This case was domesticated in Israel where that money  
3 that he was referring to was attached by order of the  
4 Court, and the judgment of, enforcement of the judgment  
5 here was recognized, but it was stayed. The Israeli  
6 court stayed the enforceability of the judgment, imposed  
7 the condition that the attachment should continue to  
8 accrue but not be distributed, hence this accumulation  
9 of funds. The attorney general of Israel is suppose to  
10 give an opinion to the Supreme Court regarding the legal  
11 issues of the enforceability of the Ungar judgment, and  
12 the attachability of that, and it will address, we're  
13 told, if they (inaudible) to issue an opinion, their own  
14 concern about this money not being available because it  
15 is money that derives from the arsenal of the courts  
16 themselves.

17 Now, indeed, the Supreme Court of Israel was to take  
18 hearing on these issues with both the plaintiffs and the  
19 defendants present and making argument, but also the  
20 Office of the Attorney General of the Government of  
21 Israel, which the Court had invited to provide its input  
22 into this complicated problem. Instead, the Supreme  
23 Court hearing and the position of the attorney general,  
24 which was due January 14th, tomorrow, was postponed for  
25 -- until September 1, 2010 and afterwards, according to

1 the translation of this resolution that the court  
2 registrar signed under the egis of the Supreme Court in  
3 Jerusalem.

4 Now, the information with respect to who made the  
5 motion, I will tell you is based upon the information I  
6 received. It was not my understanding that that request  
7 to put off the argument was made by the defendants, but  
8 I cannot stand here before you and tell you that the  
9 papers aren't constructed that way. My understanding  
10 was that the Office of the Attorney General prevailed  
11 upon the parties, and all parties consented to the  
12 continuation of the appeal process in Israel that would  
13 address the very question of the enforceability of the  
14 Ungar Rhode Island judgment here and the attachability  
15 of the funds over there.

16 My understanding further is, it is because of one  
17 very significant development that Mr. Strachman has  
18 failed to tell you about here, and that is that last  
19 Thursday the appeal of the denial of the Rule 60 motion,  
20 which was filed on behalf of the Palestinian Authority  
21 and the PLO was heard in the First Circuit by Justice  
22 Souter, Judge Lippez, and Judge Selya, in an argument,  
23 which Mr. Strachman represented and advocated on behalf  
24 of his clients. My understanding is that Israel is  
25 waiting for the First Circuit to decide this case. I

1 respectfully suggest that you should wait until the  
2 First Circuit has decided this case. I suggest further,  
3 respectfully, that perhaps you would wish to hear the  
4 argument as it is taped, apparently, and available on  
5 the First Circuit web site for the proposition, your  
6 Honor, that this is an important issue whether there  
7 will be a vacatur of the very judgment that you're being  
8 asked to address today.

9 I have, since I am not experienced in this district  
10 or this circuit, I don't have a good idea as to when the  
11 opinion in that case will issue, and I think that the  
12 Israelis feel the same way and that's why they put the  
13 thing off until September, thinking that between now and  
14 then they might expect a ruling. And the order that was  
15 signed here by the registrar of the Israeli court  
16 provides for perhaps the matter being put off even  
17 further in aid of receiving the developments that are of  
18 interest to the parties.

19 Now, therefore, that would be the first thing I would  
20 like to tell you with respect to what I consider a, at  
21 this moment in time, in the history of the case, when  
22 the appellate courts in two jurisdictions are grappling  
23 with these problems we are stampeded in here before you  
24 in dubious procedural circumstances to address the  
25 request that shifted from what it was on the original

1 motion to what it became in the reply after our  
2 opposition.

3 The motion originally filed here before you seeks  
4 payment, in full, in the amount of \$116 million, plus  
5 interest. We opposed. Now they come in and argue about  
6 an installment plan that they had devised with their,  
7 the plaintiffs' releasing money from the (inaudible) vat  
8 attachment upon each payment. I don't even believe it's  
9 clear that that is something that they are capable of  
10 doing, but I'm not going to go further into it. I just  
11 want to note that what we were hailed into court for  
12 originally changed when we got here.

13 Indeed, your questions to Mr. Strachman are most  
14 appropriate.

15 THE COURT: Mr. Hibey?

16 MR. HIBEY: Please.

17 THE COURT: I understand your point that between  
18 what the motion, originally requested and the relief  
19 that was expressed in the reply memorandum differs, but  
20 the -- well, I'm going to withdraw my question. You  
21 proceed.

22 MR. HIBEY: Fine. Now, I think the questions  
23 that you put to Mr. Strachman were appropriate ones as  
24 to what is the status of the ability of the judgment  
25 debtor to honor the judgment, and as far as I'm

1 concerned, those answers are wanting in many different  
2 regards. I'd like to now focus on those reasons. There  
3 has to come a time in this case, and in this particular  
4 proceeding, when we have to understand what the legal  
5 basis is for this proceeding at all, and my  
6 understanding of the law in that regard is that  
7 notwithstanding that we are in a federal court, the  
8 federal court is being asked to apply the law of the  
9 State of Rhode Island and, therefore, to apply whatever  
10 statutes are appropriate to the issues before it.

11 This case is brought under 9-28-3 which is the  
12 citation proceeding, and the citation proceeding is  
13 administered, if you will, through a series of statutes  
14 that run from 9-28-3 to 9-28-7. We respectfully suggest  
15 that the Collins case, which is a Rhode Island state  
16 case, is an important precedent that should govern your  
17 consideration here, a case which we cited in our  
18 opposition, but which was not responded to in the reply.  
19 In that case, six months before suit was filed, a man  
20 named Collins transferred title to his home to a  
21 corporation in which he was the sole shareholder. And a  
22 case was brought under 9-28-3 seeking a, on citation, a  
23 payment decree. The Court, the highest court of Rhode  
24 Island, held that the sole source for the payment of  
25 judgment would be the debtor's income, not his assets.

1 And so when the lower court ordered that the title to  
2 the property be recovered, the high court of Rhode  
3 Island said you can't do that because that is not  
4 possible or available to you under 9-28-3. That is  
5 distinguished from 9-28-1 in which a creditor files a  
6 civil action, obtains a creditor's bill, and has the  
7 right to seek, if you will, assets within the  
8 jurisdiction of Rhode Island to satisfy the judgment.  
9 You cannot go after any assets or anything outside the  
10 State of Rhode Island.

11 Now the characteristics of 9-28-3 which were brought  
12 here, which is the action brought here, undeniably raise  
13 the question of whether 9-28-3 is appropriate against  
14 anyone other than an individual, a person, not a non  
15 person entity. The language of 9-28-3 speaks to a show  
16 cause why an examination of the debtor's, his or her  
17 circumstances, his or her circumstances, should not be  
18 made. A decree ordering him to, or her, to pay the  
19 judgment, delivering a copy to the debtor, or by leaving  
20 it at his last place of abode, this is not the language  
21 of a statute that is designed to apply to a non person  
22 entity.

23 THE COURT: Such as a corporation.

24 MR. HIBEY: Such as a corporation. Indeed,  
25 corporations are not covered by 9-28, 1 thru 7. You

1 need to go to 9-26, Section 25 and following, to examine  
2 the provisions of Rhode Island creditors law, as it  
3 applies to the levy and execution on a corporation in  
4 satisfaction of its adjudicated debts.

5 So, in the first instance, therefore, we don't think  
6 9-28-3 applies to our clients.

7 Secondly, Mr. Strachman has, in his usual fashion,  
8 used cavalierly words to strengthen his position. One  
9 comes immediately to mind that in the same breath he  
10 speaks to the PLO as a terrorist operation. You should  
11 know that notwithstanding the media's demonization of  
12 the PLO, the United States government executive branch  
13 has never designated the PLO as a foreign terrorist  
14 organization. But in this immediate instance, his  
15 question under 9-28-4 when he talks about -- where the  
16 statute talks about the recovery of income from any  
17 source, and basically what he's attempting to do there  
18 is extra territorialize a recovery device that we  
19 respectfully believe under 9-28-3 is limited to the  
20 borders of this state. When it says you can recover  
21 from any source, by itself, does not make a case for  
22 tracking the money that is not in Rhode Island.

23 We received these papers --

24 THE COURT: You're arguing, Mr. Hibey, that if a  
25 -- let's take a hypothetical case, we have a resident of



1 Rhode Island against whom there is a monetary judgment,  
2 and he has funds on deposit in a bank in California, and  
3 that bank in California has no branches here in Rhode  
4 Island, that those funds are not reachable, is that  
5 correct?

6 MR. HIBEY: That's right. Yes.

7 THE COURT: All right.

8 MR. HIBEY: What you do is you domesticate your  
9 judgment here and you take it to California and you get  
10 the money there, and that's what they've been doing, or  
11 attempting to do in other collection and turnover  
12 actions against various entities that they claim are  
13 alter egos of the Palestinian Authority. So it's not as  
14 though they're without remedy. It is that the remedy  
15 they're seeking is utterly misplaced here. And the idea  
16 that under 28-4 inquiry can be made by examination of  
17 the debtor as to his or her circumstances or her income  
18 from any source. They take the word "any" and attempt  
19 to extraterritorialize it. I just made that word up, I  
20 think, but what I'm trying to say is, they're trying to  
21 take any and apply it, shall we say, grossly, beyond the  
22 recognized limits of the state. I'd like to identify  
23 for you a case called Small vs the United States. These  
24 days I have so many cites, 544 US 385, 2005; US Lexis  
25 3700. It's a case in the Supreme Court decided in 2005.

1           THE COURT: The first name was Small, S-M-A-L-L,  
2 Small vs United States?

3           MR. HIBEY: Yes, your Honor. I have copies of  
4 that.

5           THE COURT: All right. After the hearing you can  
6 give it to my clerk. Thank you.

7           MR. HIBEY: There was the question of the  
8 applicability of a statute that made reference to a  
9 certain consequence flowing to a person who was  
10 convicted under the statute, "convicted in any court."  
11 Justice Breyer, speaking for the majority, wrote at  
12 considerable length about the word "any", and concluded  
13 that the Congress ordinarily intended statutes to have  
14 domestic not extraterritorial application, and found  
15 that the word "any" could have such elasticity to it as  
16 to swallow up everything when that certainly cannot be  
17 the intention of the framers of the language. So the  
18 word "any" considered alone cannot answer the question  
19 of whether it includes a foreign court when you talk  
20 about a conviction in any court. And we think that  
21 that's an important factor here, that the statute that's  
22 being cited, or relied upon for the very predicate of  
23 this proceeding, when it speaks to income from any  
24 source, cannot and should not, within the scheme of the  
25 entire statutory framework, mean any, anywhere in the

1 world. It was interesting to me as Mr. Strachman  
2 recited the injunction that Judge Lagueux entered with  
3 respect to the movement of Palestinian Authority and PLO  
4 assets. He'd never attempted to restrict that beyond  
5 the federal jurisdiction of the United States. I should  
6 think that it is not a stretch at all, especially after  
7 you read Justice Breyer in the Small case to suggest  
8 that any income, assuming for the moment that the VAT  
9 money is income and I don't agree to that at all, that  
10 any income includes income outside of the state.

11 Now, let me go on. I would suggest to the Court that  
12 the points I have made with respect to 9-28-3 and 4 run  
13 all the way through to 7, and if the Court wishes to  
14 have further explication on that, I'm happy to provide  
15 it. But I think in the end, it is that 9-28-3 applies  
16 to a natural person, that the extraterritorial reach of  
17 it does not go to outside the United States, and that  
18 the reliance on other cases in other jurisdictions does  
19 not inform the question. Now what they do in New York  
20 and how they do it there has no applicability to the  
21 question of how this statute works here. A statute, the  
22 section of which they're relying on, goes well beyond  
23 where it should.

24 Now, I don't know what we accomplish here today,  
25 respectfully, beyond what I have discussed with you

1 because, like you, we were told in no uncertain terms  
2 both in writing and orally that there would be no  
3 discussion about the ability of the Palestinian  
4 Authority to be able to pay toward any judgment of the  
5 sort that is before in the Rhode Island litigation. So  
6 I'm not totally prepared because I wasn't required to  
7 come in and produce evidence for you. But I think it's  
8 very important for me to clear the air about a few  
9 things.

10 Mr. Strachman calls this a 3 and a half billion  
11 dollar operation. Unless there's a piece of paper in  
12 front of me, I'm not prepared to subscribe specifically  
13 to any set of numbers. I think all of that must be very  
14 precise, and I didn't come into court today with those  
15 kinds of numbers. But what I can tell you is that  
16 whatever the number is that he would use to characterize  
17 the governmental operation of the Palestinian Authority,  
18 you must understand that it is a deficit operation. Its  
19 obligations to the people of Palestine and to its  
20 creditors vastly exceeds whatever income they enjoy, and  
21 I will use that word income because that's good parlance  
22 here, but understand that the sources of their receipt  
23 of money, are through donor countries and through the  
24 VAT, and when he says that somehow the VAT can be tapped  
25 for the payment of a bond, therefore the VAT can be

1 available for other uses connected with the litigation,  
2 or that the VAT is holding upwards to a hundred and \$2  
3 million in U.S. equivalent under an order of attachment,  
4 that, you know, doesn't even begin to explain what the  
5 consequences are of any kind of holdback of any amount  
6 of funds respecting the lives of several million  
7 Palestinian people living in Palestine. And so I don't  
8 think it's a very easy -- I think it's too easy and too  
9 fascial to suggest that because he characterizes it as a  
10 \$3 billion operation, and they haven't had the use of  
11 these funds because they've been frozen, that they're  
12 fresh enough to do anything. The issues are far more  
13 complicated than that, and they have not been developed  
14 as of this time before this Court, because we were not  
15 required to, and the idea that you have found at another  
16 point in time to be able to put up a bond translates  
17 into the idea that someone found we can put up \$120  
18 million is fanciful. As you well know, bonds are put up  
19 in different ways that do not involve a dollar for  
20 dollar posting of the funds if there is a surety or  
21 other guarantor available. I can't tell you there is or  
22 isn't. We did not have to broach that subject because  
23 the Knox case was disposed of before any of that had to  
24 happen.

25 THE COURT: But did the Knox court make a finding

1     that the Palestinian Authorities had the ability to make  
2     payments of \$10,000 a month?

3             MR. HIBEY:  No.  The order for the bond was \$120  
4     million payable \$20 million in a first (inaudible) tranche  
5     and then \$5 million a month for 20 months, so it would  
6     be 20 plus a hundred, with the hundred over 5.

7             THE COURT:  Did the Court make a finding that the  
8     Palestinian Authority had the ability to make a payment  
9     of \$5 million a month?

10            MR. HIBEY:  Yes, he made a finding that that's  
11     the order he would make, and that is what the Magistrate  
12     Judge did.  That issue was contested.

13            THE COURT:  And determined unfavorably to the  
14     Palestinian Authority.

15            MR. HIBEY:  Well, that's my -- my recollection  
16     obviously, because it's just not refreshed well enough  
17     right now, I can't recall whether precisely Judge  
18     Lagueux ruled on our Rule 72 objection to that finding,  
19     and the only reason why I'm having trouble with that is  
20     because it was in that same time frame that Knox was  
21     disposed of, but if indeed Mr. Strachman has a document  
22     that says that the matter actually was ruled upon by  
23     Judge Marrero, I would not be surprised, but I just  
24     don't have that recollection.  I don't think it makes a  
25     difference because there's a difference between putting

1 up a bond and having a surety assist in that regard, a  
2 bond that can come back to you in the event the  
3 conditions associated with the bond are met, and I  
4 cannot remember whether it was performance and don't  
5 default again or whether it was money that would be  
6 there to secure a recovery in the event at trial we lost  
7 the case. I don't remember. But it's very different  
8 from what we're hearing here where it started with \$116  
9 million payment in full. An astonishing proposition  
10 when you know but don't tell that in fact the case is on  
11 appeal. The case has been argued. There's a tape of  
12 the argument. The matter has been put off in Israel  
13 where in the end not only does the judicial branch have  
14 to decide whether the judgment here is enforceable and  
15 attachable but the executive branch of the Israeli  
16 government must also be in agreement with respect to  
17 that. The idea that somehow that doesn't have an impact  
18 on my clients is fanciful. One need only look at  
19 letters which have been written to the District Courts  
20 in two cases, one most recently where vacatur under Rule  
21 55 was granted, but the United States Government has  
22 stated to the District Court that while it is not going  
23 to articulate a suggestion of interest per se, nothing  
24 is to be inferred from that as evidence that they have  
25 no interest in what's going on in these cases, but then

1 they go on to say, importantly, that they are concerned  
2 about the financial and political viability of the  
3 Palestinian Authority as a result of these cases and the  
4 specter of a judgment being finalized and imposed upon  
5 them. So this is very momentous and consequential  
6 business that we're about in these various cases.

7 So in the end, your Honor, we're here under the wrong  
8 statute. The predicate for being here at all must be  
9 understood in the context of these very recent  
10 developments. We're being told that we don't have to  
11 come in here and put up any kind of case today in front  
12 of you. So it begs the question, what is this all  
13 about? Well, it seems -- this is pure advocacy and I'll  
14 keep it short because that's what it is, this is a  
15 motion to scandalize us. This is a motion to influence  
16 a court in Israel that somehow a Judge in Rhode Island  
17 has most recently said that which has been the case all  
18 along, that we have an obligation under a judgment, and  
19 that this is still another occasion where we can get up  
20 and resist. Well, we are engaged fully in the process  
21 of litigating our rights as provided for by law, and  
22 we're not ashamed of that. There came a time in January  
23 of 2007 when the Secretary of State responded to  
24 President Abbas who had earlier asked for some kind of  
25 assistance in connection with the cases. Ten lawsuits



1     against the Palestinian Authority in the United States  
2     by Israelis who happened to be American citizens. And  
3     the Secretary of State wrote back and said you should  
4     engage in these cases. You should not sit back and just  
5     let them unfold and continue without participation on  
6     your part. The Palestinian Authority took that advice  
7     to heart. We were retained. We've been trying ever  
8     since to advance our legal positions in various courts  
9     where these cases are pending. We have had three  
10    vacatur that have been granted conditionally. We have  
11    on appeal the denial of this judgment, and imminently  
12    we're going to be getting a ruling. The Israeli court  
13    system is anticipating that ruling, and the parties over  
14    there, including Mr. Strachman's clients, have consented  
15    to the matter being put off. There are many procedural  
16    defects in what is before you.

17           THE COURT: Mr. Hibey, if the First Circuit rules  
18    in your favor?

19           MR. HIBEY: Yes.

20           THE COURT: Does that put this case in the  
21    posture equivalent to the Knox case?

22           MR. HIBEY: It depends on what they say. They  
23    could remand it, merely remand, or they could vacate it  
24    and take a decision up there, or they could affirm it  
25    outright. So those, I think, are the possibilities that

1 we're dealing with, and that's the sense of what I  
2 witnessed when listening to the arguments last Thursday.  
3 So those are the possibilities.

4 THE COURT: Well, in the Knox case, as I recall,  
5 the judgment had been vacated but the defendants were  
6 required to post a bond.

7 MR. HIBEY: Right.

8 THE COURT: And the issue was how much that bond  
9 was going to be.

10 MR. HIBEY: That's right.

11 THE COURT: And my question to you is, that if  
12 you are successful on your appeal to the First Circuit  
13 --

14 MR. HIBEY: Yes.

15 THE COURT: -- and the judgment is vacated, does  
16 it seem likely to you that the issues that were  
17 addressed in the Knox case will then be before this  
18 Court?

19 MR. HIBEY: Yes, only because at one point in the  
20 oral argument, my recollection is we were asked whether  
21 a bond might be imposed as a condition of vacatur, and  
22 we answered that question in the affirmative, yes. I  
23 don't purport to project as to what they're going to do.  
24 That's why I encouraged you to listen to the argument  
25 and make up your own mind if there's anything to be

1 derived from listening to an argument. So I don't want  
2 to indulge in any speculation other than to say what the  
3 possibilities are, not what the likelihood is going to  
4 be.

5 THE COURT: I guess my point, Mr. Hibey, was that  
6 you are saying that it's premature for this Court to  
7 act, that this Court should wait until the First Circuit  
8 decides the pending appeal, and I'm saying, all right,  
9 let's assume that the First Circuit rules in your favor,  
10 doesn't that get us to the situation in the Knox case  
11 which --

12 MR. HIBEY: I don't know. It depends on what  
13 they set for a bond. I can recall, also, that Justice  
14 Souter posed a series of questions that might have been  
15 joined in by Judge Selya, I can't be certain about that,  
16 about the amount of the judgment, and the consequence  
17 associated with a judgment of that size. And I know  
18 that the questions were asked and that in one of those  
19 questions, the \$116 million was recognized to be a large  
20 sum of money. I want to be careful with the adjectives  
21 because I might import some of my own sense of that into  
22 it, but that's what was said. We argued, and I should  
23 argue here, by the way, that we're confronted with this  
24 horrific irony that we're being found liable for the  
25 acts of Hamas. In the real politic of the region,

1 anybody who reads any newspaper, even newspapers here in  
2 the United States, recognize that Hamas and the  
3 Palestinian Authority have been at complete conflict  
4 with each other. Hamas was thrown out of the  
5 Palestinian Authority government structure. Hamas  
6 retreated to Gaza. Hamas engaged in the takeover of  
7 Gaza, resulting in the deaths of many Palestinians who  
8 supported the Palestinian Authority. Hamas is roundly  
9 blamed for much of the violence that emanated from Gaza,  
10 and yet we're here having to pay, or being called upon  
11 to pay for the acts of Hamas. This was when there were  
12 questions about the bond. There was a response that  
13 attempted to capture a bit of this horrific irony  
14 associated with us having to perhaps be required to  
15 honor a \$116 million judgment for the conduct of Hamas.

16 As you can see, we have an argument for a meritorious  
17 defense. That's part of trying to get the judgment set  
18 aside. Our argument in the Court of Appeals was the  
19 Judge didn't consider it. He focused, just as  
20 Mr. Strachman does here because it's such an easy thing  
21 to do, on the willfulness of the default during the time  
22 when our predecessor counsel were present in the  
23 courthouse. That's the situation. So there are many  
24 moving parts in this thing, all of which could easily be  
25 impacted -- strike easily -- will be impacted by a

1 decision from the Court of Appeals. Certainly Israelis  
2 understand it. And the others over there, with their  
3 lawyers over there, who are in league with this man,  
4 Mr. Strachman, appear to appreciate those circumstances  
5 because they consented to this motion.

6 So, respectfully, your Honor, especially in a  
7 proceeding when we're being called in here and told we  
8 don't have to put on any witnesses, do anything but  
9 simply play off some kind of record that's not really  
10 before you, that we should be doing business here today.  
11 I respectfully suggest that that is not a prudent action  
12 to take, and that any action predicated on the legal  
13 propositions that were advanced here by the plaintiffs  
14 are flawed.

15 Rhode Island law is not well-developed as this kind  
16 of creditors rights law is in other jurisdictions that  
17 have other statutes and other legislative regimes. We  
18 really think that there's great uncertainty about the  
19 applicability of these statutes if they don't hit you  
20 the same way they hit us at the outset, that they don't  
21 really apply to a non-person entity. And so in our  
22 papers we suggested you might have to certify if you  
23 wanted to really understand what was going on with these  
24 statutes. But I think all of that suggests a great deal  
25 of activity, which we believe is appropriate here, that

1 all of it could be put off until such time as the First  
2 Circuit brings some clarity to the picture. That's what  
3 we're asking for, no action be taken today.

4 If your Honor has any questions, I'd be happy to  
5 answer them. I'm grateful for the time you've given me.

6 THE COURT: I have no questions, Mr. Hibey.  
7 Thank you.

8 MR. HIBEY: Thank you, your Honor.

9 MR. STRACHMAN: If I may respond?

10 THE COURT: Yes, Mr. Strachman. I would be  
11 interested in hearing your response on the Collins case,  
12 and the argument that the statute 9-28-3 under which  
13 this action has come before the Court, the defendants  
14 argue the Supreme Court has said you can't get the  
15 relief you're seeking under that statute. Would you  
16 address that part of their argument?

17 MR. STRACHMAN: Certainly, your Honor. The  
18 Collins case, as I recall, references income. This is  
19 income. This is a stream of income that flows to the  
20 Palestinians. It does not ask this Court to transfer a  
21 piece of real estate, as the Supreme Court authorized in  
22 the Desper case where it authorized a Massachusetts  
23 property to be transferred, et cetera. This is income.  
24 This is a red herring to suggest that maybe it is  
25 income. It's described all over as income. Income is

1 cash that you get each month. That's what this is as  
2 opposed to an asset.

3 THE COURT: What about the contention that 9-28-3  
4 has no applicability to anyone other than a natural  
5 person given the references in the statute to his and  
6 her income, his or her ability to pay?

7 MR. STACHMAN: Well, there's no case that's ever  
8 held that, and although the statute is what it is in  
9 terms of the language that it uses, there's no case that  
10 I'm aware of that has ever held that it does not apply  
11 to corporations, number 1. Number 2, I know that each  
12 and every day in the district court and the superior  
13 courts of Rhode Island, corporations are hauled into  
14 court every day. I've seen the citations to  
15 corporations. I'm aware of it being done. I've seen  
16 them being called, you know, called on the calendar, to  
17 be sure a witness may have to come in to answer  
18 questions on behalf of a corporation, but a judgment  
19 debtor, that is a corporation, is brought into the  
20 supplementary proceedings all the time, and I have never  
21 seen anywhere other than in this brief a suggestion that  
22 corporations cannot. I think it is crystal clear in  
23 terms of the practices of the Judges of Rhode Island and  
24 the case law.

25 I'd also like to address, if I could, something. I

1 did misspeak. In our brief we indicated that in Knox  
2 the Court ordered a \$5 million a month monthly payment.  
3 I think I said \$10 million. After the first payment was  
4 to be made in September of 20 million each month  
5 thereafter it would be they were ordered to pay 5  
6 million. I believe that I said 10 million.

7 To start off an argument, and to come close to the  
8 end and say that this proceeding is some sort of a  
9 stampede, 5 and a half years after judgment, after my  
10 clients have been sued for enforcing this judgment by  
11 the Palestinian Authority cohorts and business partners  
12 and some entities, when they still, as I predicted after  
13 a half hour presentation made no indication at all that  
14 they would honor this judgment, that they were coming to  
15 this court with clean hands, and would respect this  
16 court, and all the work that the Court put into this  
17 case over 4 and a half years, and several years of post  
18 judgment proceedings, is shocking. This isn't a  
19 stampede. This isn't day 1. Judge Lagueux made a  
20 finding that they were transferring assets and they were  
21 not honoring the judgments. That was four years ago.  
22 They failed to contest the fact that they have not  
23 complied with the creditor's bill that was granted by  
24 Judge Lagueux, approximately three years ago. Had it  
25 been complied with, had they complied, as I suggested,



1 the judgment would have been satisfied. They don't  
2 contest that they have fought us to collect this  
3 judgment in Washington, New York, elsewhere, fought us  
4 in Israel. To suggest this is a stampede is really  
5 disingenuous.

6 In terms of the proceedings at the First Circuit, yet  
7 another red herring introduced for the first time here,  
8 and it's particularly problematic because Rule 60 says  
9 very clearly, the filing of a motion to vacate does not  
10 stay the enforcement of the judgment. They have  
11 directly never come to this Court, sought a stay of the  
12 enforcement of the judgment. They did not at the Court  
13 of Appeals. Mr. Hibey said three times today, orally,  
14 that he was requesting the Court to orally stay this  
15 proceeding and stay the enforcement of this judgment  
16 because he knows that he can't get it under Rule 60. No  
17 cases that I'm aware of say that once a Rule 60 motion  
18 is denied a then appellant judgment debtor can obtain a  
19 stay. And even more egregious is that 5 and a half  
20 years ago when this Court entered final judgment, they  
21 asked for a stay, and Judge Lagueux said you can have a  
22 stay if you place, submit a bond in the amount of  
23 \$50 million. They said they can get it right at the  
24 beginning, on appeal, before the First Circuit upheld  
25 Judge Lagueux's entry of judgment. And, of course, they

1 did not submit the bond, and never obtained a stay. So  
2 to come now orally through the back door and to try to  
3 wrangle a stay, when they certainly don't want to come  
4 through the front door, and they don't want to file a  
5 motion, and they've never filed a motion directly for a  
6 stay, should be denied and should be seen as yet another  
7 attempt to delay and obfuscate.

8 The difference in the suggestions that were made in  
9 our reply brief and our initial brief are only a matter  
10 of magnitude, not of kind. We have suggested remedies,  
11 suggested ways out of the situation. We have not  
12 changed the nature of the motion, as Mr. Hibey would  
13 suggest. We have simply said there's a couple of  
14 different ways to do it and here are some other ways, to  
15 do effectively the same thing, which is order payment  
16 toward this judgment.

17 Mr. Hibey made much of out of Rhode Island or the  
18 territorialization, I believe, in his word of the  
19 statute and this judgment. In light of the jurisdiction  
20 of federal courts, in light of the plethora of cases  
21 that we submitted from many different jurisdictions,  
22 showing that courts all the time do exactly what we've  
23 asked this Court to do, is also shocking. How could a  
24 court that hears diversity cases enter judgments but  
25 never have control over, in personam over the

1 defendant's post-judgment? The suggestion that there's  
2 some sort of in rem remedy here is completely missing  
3 the mark. This Court found repeatedly it has  
4 jurisdiction over the defendants. That jurisdiction  
5 continues. The defendants have appeared repeatedly  
6 post-judgment. They have filed enough pleadings that we  
7 are now in the mid four hundreds of docket entries over  
8 the last 5 and a half years. They have sought relief  
9 from this Court, and to suggest that the Court can't  
10 tell them what to do in terms of satisfying this  
11 judgment, is not only outrageous but it's just a  
12 continuation of the posture that they commenced right  
13 from the very first pleading signed in July of 2000.

14 They've suggested that we're seeking some sort of  
15 alter ego theory against the defendants in other cases.  
16 It's not true. We never once used the word alter ego  
17 theory. They come to this Court with very extreme type  
18 of claims, these extreme type of arguments that would  
19 nullify the ability of this Court to effectively render  
20 judgments of people who just work across state lines,  
21 and in light of a statute which this Court knows very  
22 well that allows for nationwide service of process, et  
23 cetera, we had all kinds of venue issues and  
24 jurisdictional issues early on in this litigation, on  
25 multiple occasions, but to suggest that they can now

1 hide behind these red-herrings when the Weiss court, as  
2 we cited in, I think it was page 19 of our brief, and as  
3 Judge Lagueux had indicated on several occasions, the  
4 payment of terrorism judgments serves a vital national  
5 interest. That's what the Weiss court said. Judge  
6 Lagueux made similar kinds of statements about this  
7 judgment, and that vital national interest is not being  
8 served.

9 Mr. Hibey is fond of quoting a letter that he did not  
10 submit to the Court from Condoleezza Rice in January of  
11 2007. It said a few things in it, but one thing that  
12 letter said in January of 2007 to the President of the  
13 Palestinian Authority, and to the Chairman of the PLO,  
14 Mr. Abbas, it said virtually verbatim: This judgment is  
15 final. It's enforceable. And you either have to pay it  
16 or come to terms with the Ungars. And nothing has  
17 changed in the last three years. The U.S. Government,  
18 the Israeli Government, all these government interests,  
19 we heard that for years. Nothing has changed,  
20 post-judgment, other than to suggest that two years  
21 after the judgment the executive, the president,  
22 secretary of state, rather, has told these defendants,  
23 pay the judgment because it's enforceable, and yet they  
24 come to court, and again are saying that they're not  
25 willing to pay it. Never once, in all the statements

1     about my clients, how horrible they are, and the lawyers  
2     are in league together, and what horrible people,  
3     everyone's horrible, but they're the ones who haven't  
4     honored what the Court ordered to be done five and a  
5     half years ago, all at the same time attempting to  
6     obtain a stay from your Honor, and through a back door  
7     that is not permitted, either through Rule 60, through  
8     the cases, or any other manner, and would violate Judge  
9     Lagueux's ruling that if they wanted a stay early on  
10    prior to the First Circuit upholding the judgment, which  
11    it did in, I believe it was March of 2005, they could  
12    submit a bond, which they did not do. Thank you.

13           THE COURT: All right, thank you, Mr. Strachman.  
14    Mr. Hibey, I'm not looking for additional argument but  
15    Mr. Strachman just took ten minutes. If you want ten  
16    minutes, I'll give you ten minutes, but if you choose  
17    not to, I'm not going to infer that that means his  
18    arguments are unanswerable and simply decided to rest on  
19    what you've already said.

20           MR. HIBEY: I appreciate that, your Honor. I  
21    won't take up any more of the Court's time. I think  
22    you've listened to me very carefully and I'm grateful  
23    for that.

24           THE COURT: All right, thank you. Mr. Strachman,  
25    I do have one question. Your motion, as I recall, asks

1 for the Court to act by February 10th, and I'd like you  
2 to tell me why that action is necessary by that date.  
3 I'm sure you'd prefer it as soon as possible, but I  
4 think I recall seeing some reference to February 10th,  
5 and I think when I saw it, I wasn't fully sure of the  
6 reason why that date was being selected. It may have  
7 related to the fact that that's the date by which you  
8 think the amount being held in the Israeli treasury will  
9 equal the amount of the judgment?

10 MR. STRACHMAN: I believe so, your Honor. In  
11 other words, I believe that that's how to calculate what  
12 the amount would be. Obviously there's an issue with  
13 change in currency values, but on page 1 of our motion  
14 we ask that the Court enter an order before February 1.  
15 The Court knows, without having to say yet again how  
16 long this case has endured, lasted, and we believe that  
17 it's ripe now for decision on this issue, and the  
18 payment, and that the transfer that would be made in  
19 February, the 1st day of the month in February, the  
20 Court makes an order and then they obtain the funds and  
21 then we release the funds by mid February, we would  
22 finally bring some closure to this matter.

23 THE COURT: Thank you, Mr. Strachman. I misspoke  
24 when I said February 10th. It's February 1st that's  
25 actually stated.

1       I'll certainly try to render a decision as soon as  
2 possible. I do have a matter already in progress that's  
3 going to take some time, but I will try to immediately  
4 thereafter turn my attention to this case. I thank the  
5 attorneys for their arguments. The Court will stand in  
6 recess.

7 (RECESS)

C E R T I F I C A T I O N

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/sJOSEPH A. FONTES/

COURT REPORTER

JANUARY 16, 2010

DATE